

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

TEAMSTERS LOCAL UNION NO.)
727 HEALTH AND WELFARE FUND,)
TEAMSTERS LOCAL UNION NO.)
727 PENSION FUND and TEAMSTERS)
LOCAL UNION NO. 727 LEGAL AND)
EDUCATIONAL ASSISTANCE FUND,)
) Case No. 1:13-CV-5393
Plaintiffs,)
) Judge Lee
v.)
) Magistrate Judge Brown
USA PARKING, LLC,)
)
Defendant.)

PLAINTIFFS' MOTION TO ENTER JUDGMENT

The Plaintiffs Teamsters Local Union No. 727 Health and Welfare Fund, Teamsters Local Union No. 727 Pension Fund and Teamsters Local Union No. 727 Legal and Educational Assistance Fund (collectively “the Funds”), by their undersigned counsel hereby move this Court to enter judgment in this matter, and in support thereof, state:

1. The Funds are jointly administered multi-employer employee benefit plans within the meaning of section 302(c)(6) of the Labor Management Relations Act, 29 U.S.C. § 186(c)(6), and §§ 3(1) and 3(37)(A) of the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. §§ 1002 and (37)(A).
2. The Funds initiated this action on July 29, 2013 to collect unpaid contributions owed by the Defendant to each benefit fund.
3. On January 17, 2014, a prove-up hearing was held in this matter, where neither Defendant, USA PARKING, LLC (“Defendant”) nor their counsel James O. Stola appeared, and

the Court entered a default judgment against the Defendant in the amount of \$208,434.59. (*See Dkt. No. 16*) Attached hereto as Exhibit A is a true and correct copy of the Default Judgment Order.

4. The default judgment amount of \$208,434.59 was for delinquent contributions owed to the Funds pursuant to a Collective Bargaining Agreement between the parties for the period spanning December 1, 2011 to November 30, 2013. *See Dkt. No. 12.*

5. In or around December 2014, the Funds and Defendant entered into a settlement agreement (“Settlement Agreement”) in which the Defendant agreed that Defendant owed the Funds \$446, 676.20 for the outstanding judgment balance plus additional delinquencies, interest, liquidated damages, and attorneys’ fees through November 30, 2014. *See the Settlement Agreement attached hereto as Exhibit B.*

6. Although the parties did not execute the Settlement Agreement, the Defendant made ten (10) monthly payments to the Funds consistent with the terms of the Settlement Agreement.

7. The Seventh Circuit has held that even when a contract is unsigned, “[a]n offeree may manifest acceptance of an offer by performing under the contract.” *Roberts & Schaefer Co. v. Merit Constr., 99 F.3d. 248, 252 (7th Cir. 1996).*

8. By making ten (10) payments to the Funds consistent with the terms of the Settlement Agreement, the Defendant accepted the terms of the Settlement Agreement and therefore is bound by the terms of the Settlement Agreement.

9. The Settlement Agreement is enforceable because the Defendant accepted the terms of the Agreement and performed consistent with the terms of the Settlement Agreement.

10. The Settlement Agreement provides for 7% annum interest accrueable until all contributions are paid in full. *See Ex. B., ¶ 2.*

11. The Settlement Agreement also provides that the Defendant shall timely report and pay in full its monthly contributions to the Funds commencing with the month of November 2014 to be paid on or before the 15th of December 2014 and shall pay thereafter on or before the 15th of each month, the prior month's contribution. *See Ex. A., ¶ 3.*

12. Notwithstanding the terms agreed to by the Defendant as set forth in the Settlement Agreement, Defendant has not made a payment since February 2016.

13. The Funds have written to Defendant more than once demanding payment of the contributions owed.

14. Despite due demand, the Defendant has not brought its account up-to-date. As of the filing of this motion, Defendant owes the Funds a balance of \$346, 676.20, exclusive of liquidated damages, interest and attorneys' fees. *Attached hereto as Group Exhibit C are demand letters to Defendant.*

15. Additionally, Defendant has breached the Settlement Agreement by failing to timely report and pay in full, its monthly contributions to the Funds for the period spanning from September 2015 to the present.

WHEREFORE, the Funds move the Court for an order:

- A. Finding Defendant in violation of the Settlement Agreement;
- B. Entering judgment in favor of the Funds in the amount of \$346, 676.20 plus interest at the rate of 7% per annum plus reasonable attorneys' fees and costs pursuant to § 501 of ERISA, 29 U.S.C. § 1132(g)(2); and
- C. Directing the Defendant to file all outstanding contribution reports from September 2015 to the present and to pay in full its outstanding monthly contributions to the Plaintiffs, plus interest, liquidated damages and reasonable attorneys' fees and costs.

Respectfully submitted,

WILLIG, WILLIAMS & DAVIDSON

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